

1 Michael R. Lozeau (State Bar No. 142893)
2 Richard T. Drury (State Bar No. 163559)
3 Douglas J. Chermak (State Bar No. 233382)
3 LOZEAU DRURY LLP
4 410 12th Street, Suite 250
4 Oakland, CA 94607
5 Tel: (510) 836-4200
5 Fax: (510) 836-4205 (fax)
6 E-mail: michael@lozeaudrury.com
richard@lozeaudrury.com
doug@lozeaudrury.com

8 Attorneys for Plaintiffs
9 CALIFORNIA SPORTFISHING PROTECTION
10 ALLIANCE and PETALUMA RIVER COUNCIL

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 CALIFORNIA SPORTFISHING
14 PROTECTION ALLIANCE, a non-profit
corporation, and PETALUMA RIVER
15 COUNCIL, an unincorporated association,

16 Plaintiffs,

17 vs.

18 M&M SERVICES, INC., a corporation, and
SHILOH ROAD LLC, a limited liability
company,

19 Defendants.

Case No. C11-02949 TEH

STIPULATION TO DISMISS PLAINTIFFS'
CLAIMS AGAINST M&M SERVICES, INC.;
[PROPOSED] ORDER GRANTING
DISMISSAL OF CLAIMS AGAINST M&M
SERVICES, INC.
[FRCP 41(a)(2)]

Honorable Judge Thelton E. Henderson

20 WHEREAS, on or about September 30, 2010, Plaintiffs California Sportfishing Protection
21 Alliance ("CSPA") and Petaluma River Council provided Defendant M&M Services, Inc. ("M&M")
22 with a Notice of Violation and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the
23 Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365;

24 WHEREAS, on or about May 6, 2011, CSPA and Petaluma River Council provided an
25 additional 60-Day Notice Letter under Section 505 of the Act to Shiloh Road LLC;

1 WHEREAS, on June 15, 2011, CSPA and Petaluma River Council filed their Complaint in
 2 this action. Said Complaint incorporates by reference all of the allegations contained in CSPA's
 3 Notice.

4 WHEREAS, on December 6, 2011, CSPA and Petaluma River Council filed their First
 5 Amended Complaint adding Shiloh Road LLC as a defendant.

6 WHEREAS, CSPA, Petaluma River Council, and M&M, through their authorized
 7 representatives and without either adjudication of Plaintiffs' claims or admission by Defendant
 8 M&M of any alleged violation or other wrongdoing, have chosen to resolve in full by way of
 9 settlement Plaintiffs' allegations against Defendant M&M as set forth in the Notice and Complaint,
 10 thereby avoiding the costs and uncertainties of further litigation. A copy of the Settlement
 11 Agreement and Mutual Release of Claims ("Settlement Agreement") entered into by and between
 12 CSPA, Petaluma River Council, and M&M is attached hereto as Exhibit 1 and incorporated by
 13 reference.

14 WHEREAS, the parties submitted the Settlement Agreement via certified mail, return receipt
 15 requested, to the U.S. EPA and the U.S. Department of Justice and the 45-day review period set
 16 forth at 40 C.F.R. § 135.5 has completed and the federal agencies have submitted correspondence to
 17 the Court indicating that they have no objection to the terms of the Settlement Agreement.

18 WHEREAS, upon the Court's entry of this proposed stipulated dismissal of the claims
 19 against Defendant M&M, pursuant to Paragraph 3 of the Settlement Agreement, Plaintiffs have
 20 agreed to file a subsequent stipulated dismissal of the claims against Shiloh Road LLC pursuant to
 21 Federal Rule of Civil Procedure 41(a)(1), resolving the case in full.

22 NOW THEREFORE, IT IS HEREBY STIPULATED and agreed to by and between CSPA,
 23 Petaluma River Council, and M&M that Plaintiffs' claims against M&M, as set forth in the Notice
 24 and Complaint, be dismissed by the Court. CSPA, Petaluma River Counsel and M&M respectfully
 25 request an order from this Court dismissing such claims against Defendant M&M pursuant to
 26 Federal Rule of Civil Procedure 41(a)(2). In accordance with paragraph 2 of the Settlement
 27 Agreement, the parties also request that this Court maintain jurisdiction over CSPA, Petaluma River

1 Counsel and M&M and this action through December 18, 2015, for the sole purpose of resolving
2 any disputes between the parties with respect to enforcement of any provision of the Settlement
3 Agreement.

4 Dated: September 6, 2012 Respectfully submitted,

/s/ *Michael R. Lozeau*

Michael R. Lozeau

Attorney for Plaintiffs CALIFORNIA
SPORTFISHING PROTECTION ALLIANCE and
PETALUMA RIVER COUNCIL

/s/ *Hans W. Herb*

(as authorized on 9/6/12)

Attorney for Defendant M&M SERVICES, INC.

[PROPOSED] ORDER

Good cause appearing, and the parties having stipulated and agreed,

4 IT IS HEREBY ORDERED that Plaintiffs California Sportfishing Protection Alliance's and
5 Petaluma River Council's claims against Defendant M&M Services, Inc., as set forth in the Notice
6 and Complaint filed in Case No. C11-10364, are hereby dismissed pursuant to Federal Rule of Civil
7 Procedure 41(a)(2).

8 IT IS FURTHER ORDERED that the Court shall retain jurisdiction over California
9 Sportfishing Protection Alliance, Petaluma River Council, and M&M Services, Inc. through
10 December 18, 2015 for the sole purpose of enforcing compliance by California Sportfishing
11 Protection Alliance, Petaluma River Council, and M&M Services, Inc. with the terms of the
12 Settlement Agreement, attached to the Stipulation to Dismiss as Exhibit 1, which Settlement
13 Agreement is hereby incorporated by reference.

24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 Dated: 09/10 , 2012

Thelton E. Henderson

Judge Thelton E. Henderson

Court Judge

Case No. C11-02949 TEH

**Stipulation to Dismiss Plaintiffs' Claims Against
M&M Services, Inc.; [Proposed] Order Granting
Dismissal of Claims Against M&M Services, Inc.**